

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: Evan H. Zucker

Application Serial No: 10/798,212

Filing Date: March 10, 2004

Title: METHOD AND SYSTEM FOR
EXCHANGING INTERESTS IN REAL ESTATE

Group Art Unit: 3693

Examiner: James A. Vezaris

Confirmation No.: 6145

Customer No.: 30734

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

AFFIDAVIT IN SUPPORT OF REQUEST FOR RECONSIDERATION
PURSUANT TO 37 C.F.R. § 1.132

SIR:

I, Glenn R. Mueller, Ph. D., do hereby declare as follows:

1. I reside at: P.O. Box 26102, 729 Willowbrook Road, Silverthorne, CO 80497
2. I am a U.S. citizen.
3. My educational background is as follows:

University of Denver, B.S. Business Administration

Babson College, Masters of Business Administration

Georgia State University, Ph. D Real Estate
4. I have been a Real Estate Investment Strategist at Dividend Capital Group for close to 5 years.
5. A copy of my complete Biography and Publications is attached as Exhibit A.
6. I have worked with the inventor of U.S. Patent Application Serial No. 10/798,212 (hereinafter referred to as "the present patent application"). I am familiar with the present patent application and have discussed the commercial success of the product with financial advisors and other Dividend Capital partners and customers that have used the product or recommended it to their clients.

7. I have been informed by Applicants' counsel that the present patent application stands rejected as being unpatentable over "Vesting and Finance Issues Related to Tax-Deferred Exchanges under IRC §1031" by Todd R. Pajonas (Hereinafter referred to as "Pajonas"), in view of patent publication US 2002/0013750 to Roberts *et al.* (Hereinafter referred to as "Roberts"). However, I do not believe these references could be combined to produce the invention of the present patent application. In particular, the selection of the replacement property and the lease structure of the present patent application are unique in that, in the present patent application, the REIT owns the property prior to any investor owning the property and underwrites the lease agreement. The "Master Lease agreement" and prior ownership by a fully operational REIT is absent from both Pajonas and Roberts and these attributes were substantially important to the product's commercial success.

8. I have been further informed by Applicants' counsel that a demonstration of commercial success may be included as secondary considerations in the rebuttal evidence used to overcome the foregoing rejection.

9. Dividend Capital Exchange Facilitators, LLC ("DCX") offers financial products that are embodiments of the invention described in the present patent application. These products have been used by Dividend Capital Trust ("DCT") and Total Realty Trust ("TRT") (two REITs) and collectively are referred to as DCX in the chart below. As shown in the following chart, from 2003 through 2009, DCX raised \$447,943,627 in equity for DCT and TRT. Due to the decline in commercial real estate values, there has been an overall decline in investor interest in exchanging properties using a 1031 exchange. We would expect this to turnaround once the commercial real estate market begins to see some appreciation again. However, despite this marked decline in the overall market and a perceived increased risk, the DCX product continued to enjoy investor interest in 2007-2009 due to the unique master lease structure that diversified an investor's risk.

DCX Equity Raised on Annual Basis	
2003	2,695,696
2004	26,062,182
2005	116,344,637
2006	158,738,063
2007	67,670,907
2008	64,247,941
2009	12,184,202
TOTAL	\$447,943,627

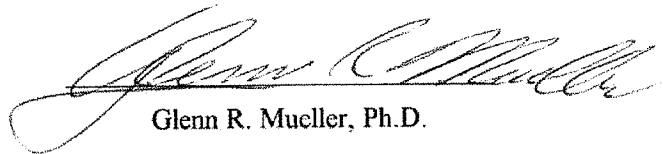
10. It is my considered opinion that this amount of equity raised from individual investors through a broker/dealer network is a clear indicator of commercial success. I also have had discussions with 1031

exchange industry participants who believe the DCX product is unique, creative, clever and has a structure that solves certain individual investor problems in doing 1031 exchange transactions that previously had not been solved. For example: 1) DCX's product offers to investors a property that is already owned by the REIT and thereby has gone through the very strict and detailed REIT due diligence process, which gives comfort to investors that the property is high quality and carries a lower risk than other properties they might be offered that have not been through an institutional acquisition process; 2) DCX's product is sold with a Master Lease guaranteed by the REIT sponsor and therefore backed by a much larger, diverse portfolio of real estate assets. Again, this lowers the risk of owning a stand alone commercial property with one or just a few tenants and simplifies the management of the investment for the investor. The lower risk in the initial ownership of the 1031 replacement property combined with the likelihood of UPREIT into a fully diversified REIT makes the invention unique in the industry. From what I have seen, this product is unique and one of the more successful types of 1031 exchange products in the market because of these differentiating attributes.

11. I declare that statements made herein of my own knowledge are true and that all statements made on information and belief to be true; and further that these statements were made with knowledge that willful false statement and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code that such willful false statement may jeopardize the validity of the application or any patent issued thereon.

8-31-2010

Date


Glenn R. Mueller, Ph.D.

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